

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PETER WIRTH, *as Personal Representative
of the Estate of Santiago Sebastian Ortiz, et al.*,

Plaintiffs,

v.

No. 2:20-cv-804 GBW/KRS

PHC-LAS CRUCES, INC., et al.,

Defendants.

SECOND ORDER TO SHOW CAUSE

THIS MATTER comes before the Court on Plaintiffs' response to the Court's Order to Show Cause, (Doc. 5), filed December 8, 2020. The response is titled "Plaintiffs' Voluntary Order of Dismissal Without Prejudice" and appears to be a proposed order for the Court. The Clerk's Office has contacted Plaintiff's counsel several times, by email and phone, asking for clarification as to whether Document 5 is intended to be a response to the Court's Order to Show Cause or a notice to voluntarily dismiss the case under Rule 41. *See* Staff Notes entered on the docket January 25, 2021; January 26, 2021; January 27, 2021; March 17, 2021. Nothing has been filed to clarify Plaintiffs' intent regarding Document 5. If a party seeks to voluntarily dismiss a case under Rule 41(a)(1) it must file a Notice of Dismissal; if a party seeks a Court's Order of Dismissal under Rule 41(a)(2) it must file a motion.

IT IS THEREFORE ORDERED that on or before **April 23, 2021** Plaintiffs shall file either a Notice of Dismissal under Rule 41(a)(1), a motion to dismiss under Rule 41(a)(2), or shall otherwise take action to continue prosecuting this action. Failure to do so may result in dismissal of this case for lack of prosecution.



KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE